

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-4
NOTICE OF THE HEARING**

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1240-5-4-.01 NOTICE.

- (1) The hearing shall be conducted at a reasonable time, date, and place after adequate written notice has been given to the appellant by the Administrative Judge/Hearing Officer.
- (2) The notice shall include:
 - (a) Date, place, and nature of the hearing with instructions to the appellant to notify the county office if he/she is unable to meet the appointment.
 - (b) A statement of the legal authority under which the hearing is held, including a reference to the particular sections of the statutes and rules involved.
 - (c) A short and plain statement of the matters asserted. The notice will define the issues and will refer to detailed statements of the matters involved, to be found in the appeal summary that is prepared by the county office and which will be made available to the appellant prior to the hearing.
 - (d) Information about hearing procedures.
 - (e) The appellant's option to present his/her case or be represented by a lawyer or another authorized person.
 - (f) The appellant's right to inspect the files of the agency with respect to the matter under appeal and to copy therefrom.
 - (g) The appellant's right to present written evidence and testimonies and to bring witnesses and members of his/her family to the hearing.
 - (h) The process by which an appellant may petition for reconsideration of an initial or final order.
 - (i) The process by which an appellant may appeal an initial order.
 - (j) The appellant's right to judicial review, If he/she is dissatisfied with the final order entered on his/her appeal.

Authority: TCA §4-5-307. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983.

1240-5-4-.02 PRE-HEARING CONFERENCE.

- (1) In any action set for hearing the Administrative Judge/Hearing Officer assigned to hear the case, upon his/her own motion or upon motion of one of the parties or their qualified representative, may direct the parties and/or the attorneys for the parties to appear before him/her for a conference to consider:
 - (a) The simplification of issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (d) The limitation of the number of expert witnesses;
 - (e) Such other matters as may aid in the disposition of the action.
- (2) The Administrative Judge/Hearing Officer shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by the admissions or agreements of the parties, and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.
- (3) Upon reasonable notice to all parties, the Administrative Judge/Hearing Officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the Administrative Judge/Hearing Officer sitting alone, to consider arguments and/or evidence on any question of law. The Administrative Judge/Hearing Officer may render an initial order on the question of law.
- (4) In the discretion of the Administrative Judge/Hearing Officer, all or part of the pre-hearing conference may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to participate in and if technically feasible, to see the entire proceeding while it is taking place.
- (5) If a pre-hearing conference is not held, the Administrative Judge/Hearing Officer for the hearing may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.
- (6) Unless precluded by law, informal disposition may be made of any appealed case by stipulation, agreed settlement, consent order or default.

Authority: TCA §4-5-306. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1983; effective March 16, 1983.

1240-5-4-.03 SUBPOENAS FOR EVIDENCE AND WITNESSES.

- (1) The department shall have the power in an Administrative Hearing to require the attendance of such witnesses and the production of such books, records, papers, or other tangible things as may be necessary and proper for the purpose of the hearing proceeding. It shall be the responsibility of the Administrative Judge/Hearing Officer to issue the subpoena, but it shall be the responsibility of the parties involved in the case to request of the Administrative Judge/Hearing Officer the issuance of a subpoena. Subpoenas may be served at any place within the State by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

(Rule 1240-5-4-.03, continued)

- (2) The Administrative Judge/Hearing Officer may at or before the time specified in the subpoena for compliance:
 - (a) Void or modify the subpoena if it is unreasonable and oppressive, or
 - (b) Tax the party making the request with reasonable costs in the production of books, papers, documents, or other tangible things.

Authority: TCA §4-5-311. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983.